



## INDIVIDUAL CONSULTANT PROCUREMENT NOTICE

Date: 5 July 2018

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**Country: Botswana**

**Description of the assignment: National Legislative Drafting Specialist (Disability Bill)**

**Project name:** Support to the Fulfilment of Human Rights, Access to Justice and Empowerment of Women and Youth Project (2018 – 2021)

**Period of assignment/services (if applicable):**

Proposal should be submitted at the following address: PO Box 54 Gaborone, Botswana or by email to no [procurement.bw@undp.org](mailto:procurement.bw@undp.org) later than **5:00pm Botswana Time on the 20<sup>th</sup> July 2018**.

Any request for clarification must be sent in writing, or by standard electronic communication to the address or e-mail indicated above. [enquiries.bw@undp.org](mailto:enquiries.bw@undp.org) will respond in writing or by standard electronic mail and will send written copies of the response, including an explanation of the query without identifying the source of inquiry, to all consultants.

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## 1. BACKGROUND

At the 38<sup>th</sup> session of the Human Rights Council, on 28 June 2018, the Government of Botswana reported to the Human Rights Council that it has taken a decision to ratify the Convention on the Rights of Persons with Disabilities (CRPD). Botswana also plans to ratify the African Union Protocol on Disabilities (AU Protocol) which was adopted at the African Union Summit in Addis Ababa, Ethiopia, on 29 January 2018.

While ratified conventions do not automatically form part of the law of Botswana, ratification of the CRPD and the AU Protocol will provide the normative framework to guide the development of an holistic and comprehensive National Disability Framework (NDF) in Botswana. The NDF will consist of a national disability strategy, national disability policy and Disability Law.

Botswana does not have a National Disability Strategy or a Disability Law. The Government of Botswana has reviewed the National Policy on Care for Persons with Disabilities (1996). The revised National Disability Policy was tabled in Parliament in 2016 but was not approved. It was subsequently further revised, and the revised version is expected to be approved by Parliament in 2018.

The Government of Botswana wants to ensure that it is ready to implement the CRPD (and AU Protocol) upon ratification, or as soon as possible thereafter, noting that States Parties undertake:

4(1)(a) To adopt all ***appropriate legislative, administrative and other measures*** for the implementation of the rights recognized in the present Convention;

4(1)(b) To take all appropriate measures, including legislation, to ***modify or abolish existing laws, regulations, customs and practices*** that constitute discrimination against persons with disabilities; ....

4(3) In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall ***closely consult with and actively involve persons with disabilities***, including children with disabilities, through their representative organizations.

The National Development Plan 11 sets out government priorities regarding disabilities. The priorities are primarily welfare-based rather than rights-based, and include initiatives such as cash transfers, allowances and restructuring rehabilitation to improve coordination and access, a database of people with disabilities and an inclusive education policy. It is understood that with the ratification of the CRPD and the AU Protocol by the Government of Botswana, passage of a Disability Law and approval of a Disability Policy and Disability Strategy will become national priorities in addition to those listed in NDP 11. Botswana has also committed to the Sustainable Development Goals including SDG16.7, ensuring responsive, inclusive, participatory and representative decision making at all levels. The CRPD and SDGs are mutually reinforcing; all references to 'equality' and the principles of inclusion that underpin the SDGs ('leave no one behind') apply to people with disabilities.

The Government of Botswana created the Disability Unit in the Office of the President in 2010, recognizing the importance of the issue of disability and the need for whole of government coordination on the issue. The Disability Unit is the secretariat for the National Coordinating Committee on Disability (NCCD), which provides oversight of disability policy in Botswana. NCCD processes are consultative and inclusive of people with disabilities.

The development of the Disability Bill (as part of the National Disability Framework) will be coordinated by Disability Office at the Office of the President as secretariat for the NCCD, in close consultation with PwDs. A consultation plan will be developed which will include consultations on the draft Bill and verification and endorsement of the draft Bill by the NCCD and PwDs. Government will meet with key stakeholders including civil society disabled persons' organisations on the plans to ratify the CRPD and the AU Protocol and to seek input into the draft Disability Strategy and Draft Bill prior to endorsement by the NCCD.

UNDP and the Government of Botswana have signed the "Support to the Fulfilment of Human Rights, Access to Justice and Empowerment of Women and Youth Project" (2018 – 2021) ("the Project"). Under the auspices of this Project, the Government of Botswana has requested support from UNDP to develop a National Disability Strategy and Disability Law, conduct consultations and convene an international conference on Disability in 2019.

Accordingly, UNDP is procuring the services of a National Legislative Drafting Specialist (Disability Bill). The National Legislative Drafting Specialist (Disability Bill) will work closely with the Disability Law Specialist, to produce a Disability Bill to domesticate the CRPD and AU Protocol, mainstream disability rights into the law of Botswana and make the necessary transitional and consequential amendments to existing laws. The Disability Bill will be developed in September and October 2018 for approval by the NCCD. The Disability Bill will build upon a review<sup>1</sup> of the legal framework of Botswana for people with disabilities (PwDs) which was conducted in 2011 and the Situation Analysis of Disability Rights in the Context of Botswana (2016). It will also take into account existing draft Bills to amend the Building Control Act 1960 and Penal Code. The Disability Law Specialist will develop drafting instructions to guide the National Legislative Drafting Specialist. The National Legislative Drafting Specialist will draft the Bill consistent with the endorsed drafting instructions and the Legislative Drafting Guidelines for Botswana. Together they will finalise the draft Bill in coordination with UNDP and the Disability Office.

The Consultant will report to the Human Rights Specialist, UNDP and the Coordinator of the Office of the President (Disability Unit). The Office of the President will coordinate the consultant's access to relevant cases and legislation.

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<sup>1</sup> *Final Review of the Legal Instruments, Policies, Strategies and Programmes for the Integration of Issues for People with Disabilities* (2011).

## 2. SCOPE OF WORK, RESPONSIBILITIES AND DESCRIPTION OF THE PROPOSED ANALYTICAL WORK

### **Deliverables**

In close collaboration with the Human Rights Specialist (UNDP) and Coordinator Disability Unit, Office of the President, the consultant will convert the policy and drafting instructions for a Disability Bill into a draft Bill and liaise closely with the Disability Law Specialist to ensure finalization of the Disability Bill to the standard required for approval by the National Coordinating Committee on Disability (NCCD).

The **deliverables** are:

1. A Disability Bill that is consistent with the specifications below and acceptable to the National Coordinating Committee on Disability;
2. Review the draft Explanatory Memorandum for the Disability Bill.

The **milestones** are:

1. Initial draft Disability Bill produced for review (30 September 2018); and
2. Final draft Disability Bill and reviewed Explanatory Memorandum submitted to NCCD for approval (30 October 2018).

**Specifications:** the Disability Law must:

- Domesticate the CRPD and the AU Protocol and mainstream disability rights into the policy and law of Botswana;
- Include all recommended transitional and consequential amendments to the laws of Botswana;
- Include an Explanatory Memorandum setting out the policy and background for the Bill and outlining the objective and effect of each clause of the Bill;
- Take into account the legal and policy setting in Botswana, including NDP 11, the National Disability Framework, the Constitution of Botswana, the domestic legal framework in Botswana, and relevant case law;
- Be compliant with the Legislative Drafting Guidelines issued by Attorney General's Chambers in Botswana;
- Be appropriate to the local context in Botswana; and
- Be written in plain English.

**Specific tasks** to achieve the deliverables will include:

1. Convert the drafting instructions as prepared by the Disability Law Specialist and approved by the NCCD into a draft Disability Bill;
2. Work closely with the Disability Law Specialist to ensure the draft Disability Bill fully reflects the approved drafting instructions (September 2018);
3. Revise the draft Disability Bill (in close coordination with the Disability Law Specialist) to reflect input received during consultations (September - October 2018) and draft the Explanatory Memorandum;
4. Submit the final draft Disability Bill (October 2018).

### 3. REQUIREMENTS FOR EXPERIENCE AND QUALIFICATIONS

#### I. Academic Qualifications:

- Minimum Master's degree in law. Advanced qualifications in human rights, disability law or policy will be highly regarded.

#### II. Required experience:

- Minimum 10 years' legislative drafting experience in the Botswana context;
- Demonstrated ability to draft Bills to a high standard and consistent with the Legislative Drafting Guidelines in Botswana;
- Demonstrated familiarity with the CRPD and international and regional disability instruments; and
- Excellent written and oral communication skills.

#### III. Competencies:

##### **Core Competencies:**

- Uses substantive mastery of technical content to build consensus and motivate performance;
- Demonstrates openness to change and ability to manage uncertainties and complexities;
- Remains calm, in control and good humored even under pressure;
- Close attention to detail;
- Demonstrates excellent oral and written communication skills.

##### **Technical Competencies:**

- Expertise in legislative drafting;
- Ability to draft documents in plain English;
- Fluency in written and spoken English.

### 4. DOCUMENTS TO BE INCLUDED WHEN SUBMITTING THE PROPOSALS.

Interested individual consultants must submit the following documents/information to demonstrate their qualifications:

#### **1. Technical Proposal:**

- (i) How the work will be conducted; and
- (ii) Explaining why they are the most suitable for the work.

The technical proposal can be in the form of a motivational letter that explains the bidder's experience and expertise as compared with the requirements in this TOR. The consultancy can be primarily home based, however some meetings will be required in Botswana and via skype between August – October 2018.

The technical proposal must indicate availability to complete the work between August - October 2018. While there can be some flexibility around the dates, the work is required to be completed in the timeframes specified in the TOR.

## **2. Financial proposal**

**3. Personal CV** including past *relevant* experience and the names and contact details of at least 3 referees.

## **5. FINANCIAL PROPOSAL**

The financial proposal shall specify a total lump sum amount, and payment terms for the deliverables (i.e., whether payments will fall in installments or upon completion of the entire contract). Payments are based on delivery of the services specified in the TOR. The financial proposal must include a breakdown any lump sum amount (eg travel, fees, per diems, and number of anticipated working days).

### **Travel and subsistence costs**

*All envisaged travel costs and subsistence costs must be included in the financial proposal.* This includes all travel to join the duty station/repatriation travel. In general, UNDP will not accept travel costs exceeding those of an economy class ticket. Should the IC wish to travel on a higher class, he/she should do so using his/her own resources. If payment for any amount (eg travel, per diems) is required at a specific time, this should be specified in the financial proposal, noting that usually UNDP will not pay for travel or per diems in advance of arrival of the consultant in country.

In the case of unforeseeable travel, payment of travel costs including tickets, lodging and terminal expenses should be agreed upon, between the respective business unit and Individual Consultant, prior to travel and will be reimbursed. Local travel costs (transfer to and from airport and travel within Botswana for purposes of completing the assignment) should not be included in the financial proposal.

## **6. EVALUATION**

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Individual consultants will be evaluated based on the following methodology:

**Cumulative analysis**

*When using this weighted scoring method, the award of the contract should be made to the individual consultant whose offer has been evaluated and determined as:*

*a) responsive/compliant/acceptable, and*

*b) Having received the highest score out of a pre-determined set of weighted technical and financial criteria specific to the solicitation.*

*\* Technical Criteria weight; 70%*

*\* Financial Criteria weight; 30%*

*Only candidates obtaining a minimum of 50 points are considered for the Financial Evaluation*

<b>Evaluation criteria – responsive / compliant / acceptable</b>	<b>Evaluation</b>
<b>Qualifications</b>  Minimum Master's degree or equivalent in law. Advanced qualifications in disability law or policy will be highly regarded.	Yes/No
<b>Experience</b>  Minimum 10 years' legislative drafting experience in the Botswana context	Yes/No
<b>Proposal</b>  Complete Consultancy package submitted (CV, references, technical and financial proposals)	Yes/No

<b>Criteria</b>	<b>Weight</b>	<b>Max. Point</b>
<b><u>Technical</u></b>		
Demonstrated ability to draft Bills to a high standard and consistent with the Legislative Drafting Guidelines in Botswana;	40%	40
Demonstrated familiarity with the CRPD and international and regional disability instruments;	30%	30
<b><u>Financial</u></b>	30%	30





## **ANNEX**

### **ANNEX 1- INDIVIDUAL CONSULTANT GENERAL TERMS AND CONDITIONS**